IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO.8603 of 2005

Between:

The Chief Executive Officer, Zilla Parishad, Adilabad

District.

..... PETITIONER

AND

1 Sri G.Bhoomanna, s/o Dhammanna,
O/o MPDO, Kuntala/Nirmal, Adilabad District.
2 The Mandal Parishad Development Officer, Mandal Parishad,

Kuntala, Adilabad District.
3 The Government of Andhra Pradesh rep., by its Secretary,

Panchayat Raj and rural Development Department,
Secretariat, Hyderabad.
4 V.Manohar, Typist, o/o Mandal Parishad Development

Officer, Kuntala, Adilabad District.
(Respondents 2 and 4 are not necessary)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of WRIT OF CERTIORARI, calling for the records pertaining to the O.A.NO.1132 of 2000, on the file of the A.P.A.T. dated 10-4-2000 and quash the same.

Counsel for the Petitioner: SMT.JYOTHI ESWAR GOGINENI

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court, at the admission stage made the following:

ORAL ORDER:- (PER GB, J)

The writ petition is filed by the Zilla Parishad assailing the order, dated 10.04.2000, passed by the A.P. Administrative Tribunal, Hyderabad, in O.A. No.1132 of 2000.

2. The respondent was appointed as a Typist on daily wage basis on 18.09.1990 and he continued in the said capacity continuously. However, when his services were not regularized he filed O.A.No.3956 of 1999 and the same also came to be disposed of subsequently. In the meanwhile, he was sought to be relieved on 26.01.2000. The said relieving order came to be challenged by the respondent in O.A. No.1132 of 2000.

3. The learned Tribunal after considering the matter set aside the order of relieve by an order, dated 10.04.2000, against which the present writ petition has been filed.

4. Learned Standing Counsel for Zilla Parishad submits that the 1st respondent was appointed as a Typist on daily wage basis and when the regular recruitment has taken place, some other candidate was appointed and posted. Under those circumstances, the order of the Tribunal is not sustainable. Learned Counsel further submits that merely because the 1st respondent was continuing on daily wage basis, he cannot acquire any right to continue permanently. Thus, the learned Counsel submits that the order is not sustainable.

5. On the other hand, learned counsel for the 1st respondent submits that since he was working for more than 15 years and that the Tribunal has taken into consideration that there are also other posts available, the order of the relief was set

aside and directed the 1st respondent to be continued in service pending the regularization which matter was sub judiced before the Tribunal in O.A.No.3956 of 1999 and the same was disposed of and now the matter is pending before the Apex Court.

6. We have considered the respective contentions made by the learned counsel for both the parties.

7. This aspect was dealt with by the Tribunal in the following paragraphs.

> "10. After hearing the learned counsel for the applicant as well as the learned Standing Counsel for Z.P., it is seen that the chronology of events took place are as follows:
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> 11. The applicant was appointed on 18.09.1990 by the Mandal Parishad Development Officer, Kuntala, on daily wage basis and the applicant continued upto January, 2000 till the impugned orders were issued by the Mandal Parishad Development Officer, Kuntala based upon the orders issued by the Chief Executive Officer, Zilla Parishad, on 17.01.2000 posting one Manohar in place of the applicant who was appointed under compassionate appointment scheme. The applicant continued in service as daily wage Typist. Subsequent to these orders, in view of the interim orders issued by the Tribunal as well as the posting orders issued by the Chief Executive Officer, Z.P., consequently, the applicant was posted at M.P., Nirmal on 03.05.2000.
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> 12. The question of regularization of services of the applicant is not the issue before this Tribunal in this O.A. However, it is to be observed that based upon the final orders issued by the Apex Court with regard to the cut off date to be considered as criterion for such regularization, the question of regularization of services of the applicant in this case will arise. However, it is clear that the applicant continued in service and as admitted by the Chief Executive Officer, Z.P., in his counter, the applicant was given posting orders on 3.5.2000 posting him to Mandal Parishad, Nirmal. It is only on appointment, his services were terminated. It is also seen that as the request of the applicant for regularization was rejected through Government Memo No.26494/Estt.V/A3/99-5, dated 6.6.2002 on the ground that he had not completed five years of service as on 25.11.1993 and consequently, the

Chief Executive Officer, Z.P., issued speaking orders on 24.7.2002. It is in view of these orders, the applicant was not allowed to function as Typist in Mandal Parishad, Nirmal from 25.7.2004 where Ramadevi was appointed as Typist in M.P., Nirmal. Thus, it is to be seen that the applicant is continued upto 21.5.2004 as Typist.

13. Thus, the above facts clearly reveal that the applicant was continued in service ever since 1990. His services were continued in M.P., Kuntala and later Nirmal. By the date of appointment of Ramadevi on 21.5.2004, the applicant had put in nearly 14 years of service. Though it is seen that the request of the applicant for regularization of his services was rejected, however, the issue of regularization of services of such employees regarding the cut off date is a matter pending before the Apex Court. Thus, the question of regularization of services of the applicant who was in service from 1990 till 21.5.2004 undisputedly will have to be decided only after the orders of the Apex Court are received. However, the fact remains that as per the orders of the Hon'ble High Court now in force, the applicant is entitled for regularization of services without reference to the cut off date, but, however, with reference to the date on which he completed five years of service in the year 1995, and also had such regularization taken place or takes place in future, the applicant would be entitled for all the benefits due to him. In view of this, the services of the applicant ought not have been disturbed for the simple reason that by 1995 itself he completed five years of service and also, he was very much in service and once the regularization of his services takes place, termination of services as contemplated by the respondents does not arise. Such being the case, the question of not only the cut off date and also competency does not arise. It is also to be seen that there are number of vacancies of Typists which fact was not disputed in the counter.

14. In view of the above facts and circumstances, the impugned orders issued by the Chief Executive Officer, Zilla Parishad, and the consequential orders issued by the Mandal Parishad Development Officer, M.P., Nirmal, to the extent of relieving the applicant are set aside. The Chief Executive Officer, Adilabad, is directed to continue the applicant in service and allow him to perform his duties. He shall also pay the amounts, if any, due to him for the period the applicant worked up to 21.5.2004, within a period of two months from the date of receipt of a copy of this order. It is further ordered that based upon the orders of the Apex Court, the question of regularization of services of the applicant shall be considered and also orders issued accordingly. It is further made clear that the applicant will not be entitled for any wages for the period he had not actually worked from 21.5.2004 onwards till his joining in a new post, for which the Chief Executive Officer, Z.P., Adilabad, shall issue orders within a period of 15 days from the date of receipt of a copy of this order."

8. The Tribunal has clearly recorded a finding that the termination of services of the 1st respondent herein was not warranted inasmuch as he has been working for more than 15 years.

9. Under those circumstances, keeping in view the facts and circumstances of the case, we are not inclined to interfere with the order passed by the Tribunal.

10. Learned Standing Counsel for the petitioner submits that there are no vacancies to accommodate the 1st respondent, therefore the question of reinstating him does not arise.

11. We are afraid we cannot accept the submission made by the learned counsel inasmuch as the Tribunal recorded a finding that there were vacancies as the Zilla Prarishad could not dispute the availability of the vacancies.

12. Accordingly, the writ petition is dismissed. No costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 28.04.2005

ES/NSR

To

1 The Chief Executive Officer, Zilla Parishad, Adilabad

District.

2 The Mandal Parishad Development Officer, Mandal Parishad,

Kuntala, Adilabad District.
3 The Secretary, Government of Andhra Pradesh,

Panchayat Raj and Rural Development Department,
Secretariat, Hyderabad.
4 2 CCs to the GP for Panchayat Raj and Rural Development, High Court buildings, Hyderabad (OUT)

5 2 CD copies